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# Westmoreland vs. CBS— A General's Day in Court

**"I was ambushed," charges the Vietnam commander. "Truthful and accurate," counters the network.**

With William C. Westmoreland nearing the end of his case, CBS was poised in late November to summon its own battery of witnesses in a libel trial that is focusing on the network's journalistic practices and ethics.

The retired general's strategy in the 120-million-dollar suit has been to depict CBS as so eager to make him look bad that it performed a prime-time televised "lynching."

For seven weeks, Westmoreland and more than a dozen friendly witnesses have held center stage in a federal courtroom in Manhattan. Bit by bit, his lawyers have tried to prove that CBS cast aside all scruples to show falsely that he had deceived both President Lyndon Johnson and the public about the nature of the enemy in Vietnam.

At issue is the 1982 CBS documentary "The Uncounted Enemy: A Vietnam Deception," which accused Westmoreland of playing down enemy troop figures as part of an attempt to demonstrate progress in a war that was causing deep divisions in the United States.

In its 90-minute program, CBS alleged that the general, commander of U.S. forces in Vietnam during 1964-68, was part of "a conspiracy at the highest levels of American military intelligence to suppress and alter critical intelligence on the enemy leading up to the Tet offensive."

The documentary implied that Westmoreland deceived Johnson in an attempt to get him to commit more U.S.



Mike Wallace, a co-defendant, on his way to court. General Westmoreland said Wallace went "for my jugular."

soldiers to the war. The true size of the enemy, said CBS, became apparent only when the bloody Tet battles of January, 1968, showed that the Communists could strike at will anywhere in South Vietnam, including Saigon.

The 70-year-old soldier, sitting ramrod straight and adding dramatic weight to his comments by turning to look directly at the jury, took the stand in mid-November to charge CBS with unethical behavior. He said that the network tricked him into an interview by promising an evenhanded and "educational" examination of Tet.

But once correspondent Mike Wallace and producer George Crile began grilling him, the silver-haired South Carolinian said he realized that "I was participating in my own lynching."

Here is the case presented to the jury

by Westmoreland's lawyers thus far—

■ **Lack of balance.** CBS made no effort to present a balanced report. They claim the network cut material favorable to him and chose not to interview key officials who would have made clear that what CBS saw as a conspiracy

was in reality a dispute over what constituted the enemy in Vietnam.

The general said that while the videotape rolled, Crile sat behind him scribbling suggestions on paper and flashing them to Wallace. "I was under very bright lights, and there were two cameras going," he told jurors. "When Mr. Wallace was talking, I didn't know I was on camera. I was wetting my lips, preparing to answer his questions." The result, he said, was that he seemed defensive and anxious.

"I realized he and Mr. Crile had orchestrated a scenario so they would go for the kill," the general

continued. "They wanted to go for my jugular. . . . I realized I was ambushed."

The jury saw unused portions of tape in which Crile seemed to be coaching subjects of his interviews. One rebuked Crile, saying: "You're trying to make me say something harder than it is."

The point was also made that CBS used as a paid consultant for the documentary the same CIA analyst—Sam Adams—who originally took issue with Westmoreland's enemy estimates.

■ **No conspiracy.** Westmoreland's lawyers sought to show that there was never a conspiracy to keep from Johnson enemy-troop estimates that were higher than those supplied by the general. Walt Rostow, Johnson's national-security adviser, testified that the President was well aware of a debate over the size of the enemy and was familiar with both sets of figures. Westmoreland, he said, seldom used a "good-news tone" in speaking of the war. Rostow was questioned by CBS for the program, but his interview did not appear in the documentary.

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Robert Komer, civilian-pacification chief in Vietnam, also testified that even though Westmoreland made clear his disbelief in the higher figures, he nonetheless passed them along to Ambassador Ellsworth Bunker for relay through channels to Johnson.

■ **Basis for troop estimates.** Jurors were told that the figure Westmoreland used reflected military reality, not politics. The dispute, said the general, came down to a disagreement over whether to count Communist self-defense forces. The CIA figure of nearly 600,000 included them; Westmoreland's count of 324,000 did not. The general explained that his decision was based partly on the view of U.S. combat officers that the home guard had no offensive capability.

This was backed up by Col. John Stewart, an intelligence aide who called the militia "a motley crew" that was poorly armed, badly organized and often ran from U.S. troops. Lt. Gen. Daniel Graham, who had a key role in Army intelligence in Vietnam, said that, if anything, Westmoreland overstated Communist strength—an argument that CBS tried to shake on cross-examination.

Other witnesses said the dispute over figures was mainly with one junior CIA analyst—Adams—and that most experts agreed with Westmoreland. Adams's boss in Vietnam, CIA official George Carver, described him as "very prone to jump to conclusions and very intolerant of people who did not share the conclusions to which he jumped." CBS succeeded, however, in extracting evidence that CIA concern over enemy figures was more widespread.

■ **Reports to Washington.** The court was told that there was no effort to suppress reports of heavy enemy in-

filtration in the months before Tet. Witnesses said that the assault was expected for a year and that news of unusual enemy movements down the Ho Chi Minh Trail was routinely sent to Washington by Westmoreland's command.

One intelligence officer testified on cross-examination that, just a month before Tet, the official monthly infiltration figure suddenly doubled to 20,000. Earlier that year, he said, it had been about 5,000 to 8,000—the approximate figures put out by Westmoreland at the time.

For the general to win his case, he must prove that the network knowingly broadcast defamatory falsehoods or showed a reckless disregard for the truth in preparing the documentary.

Once Westmoreland winds up his case, CBS will have a turn to present its side, probably about mid-December.

CBS lawyers already have said that they would help the jury understand "the state of mind" of the defendants when the documentary was produced, and that the network was interested only in a "truthful and accurate" reflection of events in Vietnam. Expected to testify are a score of CIA, Army and former White House personnel.

Far more than a libel award may hang in the balance. If Westmoreland wins, it could encourage other well-known figures to bring suits. Thus, the trial is being closely watched by journalists and legal scholars sensitive to trends that could alter the First Amendment's guarantee of a free press.

"Whenever there is a libel case," comments Benno Schmidt, dean of the Columbia Law School, "a plaintiff will find it to his or her advantage to turn the editorial process over and shake it and see what comes out." □



By WILLIAM L. CHAZE